

In The Matter Of:
DNREC
Striped Bass Recreational Fishing

Hearing
June 25, 2020

Wilcox & Fetzer, Ltd.
1330 King Street
Wilmington, DE 19801
email: depos@wilfet.com, web: www.wilfet.com
phone: 302-655-0477, fax: 302-655-0497



DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Proposed Regulatory Amendments)
to 7 DE Admin Code 3503, Striped Bass)
Recreational Fishing Seasons; Methods)
of Take; Creel Limit; Possession Limit)
and 7 DE Admin Code 3504, Striped Bass)
Possession Size Limit; Exceptions)
Virtual Public Hearing)

.. .. .

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Access Code: 710 615 638

Thursday, June 25, 2020
6:00 p.m.

.. .. .

BEFORE: Theresa Newman, Hearing Officer

FOR THE DIVISION: John Clark, DNREC

-- Transcript of Proceedings --

WILCOX & FETZER
1330 King Street
Wilmington, DE 19801
(302) 655-0477
www.wilfet.com



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1 MS. NEWMAN: We are going to go
2 ahead and begin now. Good evening. I
3 believe everyone has connected and is ready
4 to go, so we are going to begin the virtual
5 public hearing.

6 First I want to thank everyone who
7 has taken time out of your busy schedules to
8 join us today.

9 Today is Thursday, June 25, 2020,
10 and the time is now 6:02 p.m.

11 We are here this evening to provide
12 a virtual platform for the State of
13 Delaware's Department of Natural Resources
14 and Environmental Control on the Proposed
15 Regulatory Amendments to 7 DE Code 3503,
16 Striped Bass Recreational Fishing Seasons,
17 Methods of Take, Creel Limit, Possession
18 Limit; and 7 DE Admin Code 3504, Striped Bass
19 Possession Size Limit, Exceptions.

20 My name is Theresa Newman, and
21 Secretary Garvin has appointed me to serve as
22 the hearing officer for tonight's formal
23 proceeding.

24 There have been changes made to



1 DNREC's standard hearing protocols,
2 necessitated by Delaware's ongoing state of
3 emergency due to the COVID-19 pandemic.

4 First and foremost, this hearing is
5 being conducted virtually. Staff is not all
6 together in the same room. Everyone is
7 participating independently at their own
8 respective locations.

9 While there is no sign-in sheet to
10 document physical attendance tonight, WebEx
11 does generate a list of those that are
12 virtually present for the proceeding so that
13 the Department can still have a record of
14 those who have electronically joined this
15 event.

16 At the conclusion of the
17 introductory remarks, I will be turning the
18 hearing over to Department staff, who will be
19 making a formal presentation regarding the
20 regulatory matter before us tonight for the
21 benefit of the formal hearing record being
22 generated.

23 There is a court reporter virtually
24 present, who will prepare a verbatim



1 transcript of the hearing, pursuant to the
2 statutory requirement for DNREC to have the
3 same prepared.

4 And, as always, that transcript
5 will be available -- will be posted on the
6 hearing web page dedicated to this matter as
7 soon as it is received.

8 Please note that the Department
9 will not be accepting any comments in
10 realtime during the hearing this evening.
11 DNREC wishes to ensure, however, that
12 everyone is enabled to offer their comments
13 for inclusion into the record being generated
14 in this matter.

15 Therefore, in all DNREC virtual
16 hearings, and until further notice, the
17 record will remain open for a minimum of 15
18 days following the hearing event. In more
19 complex cases and in the event a request for
20 a longer comment period is received, an
21 extension of time for public comment will be
22 granted.

23 I would encourage those who have
24 joined the hearing this evening to check the



1 web page dedicated to this hearing public
2 matter by going to DNREC's web page, clicking
3 on the tab for Administrative Law Section,
4 and viewing all related details to this
5 hearing.

6 All mechanisms previously available
7 by which to offer comment remain -- the
8 electronic comment form, via e-mail, and via
9 USPS.

10 Also, the following protocols
11 remain in place for DNREC public hearings:

12 All comments received must be
13 solely limited to the subject matter of
14 tonight's hearing.

15 All comments pertinent to the
16 subject matter of the virtual hearing will be
17 incorporated into the hearing record being
18 generated in this matter.

19 In order to ensure that everyone
20 who wishes to offer comment for the
21 Secretary's consideration is accommodated,
22 the record in this matter shall remain open
23 for a full 15 days following tonight's
24 proceeding, or through Friday, July 10, 2020.



1 There is one authentic record of
2 this proceeding tonight, and it is the
3 official court reporter's verbatim
4 transcript.

5 The statutory purpose of tonight's
6 hearing is to build a record with regard to
7 the proposed amendments to 7 DE Admin Code
8 3503 and 3504.

9 A record consisting of the
10 transcript for tonight's hearing, all written
11 comments, all exhibits, and my report will be
12 reviewed by the Secretary.

13 The Secretary will ultimately issue
14 an order following that review process,
15 containing his decision on this matter and
16 the reasons therefor.

17 There will be no Q and A session
18 permitted during the hearing, nor will any
19 realtime comments be accepted via this
20 virtual platform during the course of
21 tonight's proceeding.

22 Lastly, it is important to note
23 that no decision has already been made by the
24 Department, nor will any decision be made



1 tonight with regard to the regulatory matter.

2 Again, this hearing record being
3 generated in this matter shall remain open
4 for an additional 15 days from today's date
5 so that members of the public have ample
6 opportunity to offer written comment for the
7 Secretary's consideration, should they wish
8 to do so.

9 Written comment may be received by
10 the Department up through Thursday -- I'm
11 sorry -- up through Friday, July 10, 2020.

12 Comments may be submitted through
13 the comment form link on the hearing page or
14 via email to
15 DNRECHearingComments@delaware.gov, or via the
16 U.S. Postal Services at the physical address
17 for DNREC indicated on the hearing page and
18 the public notice previously issued in this
19 matter.

20 Written comments to DNREC may be
21 submitted using social media platform such
22 as -- I mean, I'm sorry, written comments to
23 DNREC may not be submitted using social media
24 platforms such as Twitter, Facebook, YouTube,



1 or text messaging.

2 It is important to note that all
3 comment received either through USPS or
4 through electronic mechanisms noted just now,
5 as long as received by the Department on or
6 before July 10, 2020, will bear the exact
7 same weight and will be considered equally by
8 the Secretary prior to making his final
9 decision in this matter.

10 The ultimate decision regarding the
11 matter is made by DNREC Secretary Garvin.
12 This formal hearing tonight acts as a
13 mechanism to enable the Department to
14 thoroughly vet this proposed action to the
15 public and to let the public know the various
16 ways which comment may be submitted for
17 Secretary Garvin's consideration.

18 With that being said, I am now
19 going to hand it over to the Division's
20 presenter, Mr. John Clark, with the Division
21 of Fish and Wildlife.

22 You may proceed, Mr. Clark.

23 MR. CLARK: Oh, thank you, Theresa.

24 MS. NEWMAN: You're welcome.



1 MR. CLARK: This is John Clark.
2 I'm the section administrator for the
3 Fisheries Section of the Delaware Division of
4 Fish and Wildlife.

5 I am just going to strike this
6 screen for a second so I can pull up the list
7 of exhibits. And I can go through the
8 exhibits here that we are submitting in
9 support of this regulation.

10 Exhibit 1 is the meeting minutes
11 from the November 20, '19 meeting of the
12 Advisory Council on Tidal Finfisheries, which
13 includes the Council's motion to recommend
14 Delaware's ASMFC approved Management Option 1
15 for compliance with the Striped Bass Addendum
16 VI.

17 Exhibit 2 is a copy of the
18 Secretary's Emergency Order implementing
19 Option 1 as of February 15, 2020.

20 Exhibit 3 is a copy of the approved
21 Start Action Notice pertaining to the
22 proposed amendment from Secretary Garvin.

23 Exhibit 4 is a copy of the
24 Regulatory Flexibility Analysis/Regulatory



1 Impact Statement corresponding to the
2 proposed action as published in the June 2020
3 Delaware Register.

4 Exhibit 5 is a copy of the register
5 notice and the proposed amendment to the
6 striped bass regulations, as published in the
7 2020 Delaware Register of Regulations.

8 Exhibit 6 is evidence for the
9 publication of legal notice regarding the
10 proposed amendments to the striped bass
11 regulation, as published in the Delaware
12 State News and the Wilmington News Journal on
13 May 31, 2020.

14 Exhibit 7 is a notice of this
15 public hearing as it appeared on Delaware's
16 Statewide Calendar and posted May 14, 2020.

17 Exhibit 8, a copy of the legal
18 notice for tonight's public hearing as posted
19 on DNREC's public notices website starting on
20 May 31, 2020.

21 Exhibit 9, additional noticing sent
22 to the Fisheries List Serve of e-mail
23 address, certain Blackboard Connect
24 subscribers, and posted on the Division's



1 Facebook page regarding tonight's hearing on
2 the striped bass regulations.

3 Exhibit 10 is a copy of the legal
4 notice for tonight's public hearing as posted
5 on the bulletin board of the DNREC building
6 lobby on June 5, 2020.

7 Exhibit 11 is a copy of the
8 proposed amendments to the regulation.

9 Exhibit 12 is a copy of the
10 presentation that I will be giving tonight on
11 the regulation.

12 And Exhibit 13 is a copy of the
13 written comments submitted as of close of
14 business on the 24th, yesterday.

15 And with that, I will now go into
16 the presentation on the regulation.

17 Okay. This change to the striped
18 bass regulations is necessitated by the
19 Addendum VI to Amendment 6 of the Atlantic
20 States Marine Fisheries Commission Striped
21 Bass -- Atlantic Striped Bass Fisheries
22 Management Plan approved in October of 2019.

23 And it requires all states to
24 reduce the removals of striped bass by



1 18 percent.

2 Compliance with Fishery Management
3 Plans that are approved by Atlantic States
4 Marine Fisheries Commission is mandatory for
5 all member states, including Delaware.

6 And if a state is not in compliance
7 with the Fisheries Management Plan, that
8 fishery can be closed.

9 When the plan was approved, the
10 addendum was approved, the states were given
11 the option of either adopting the default
12 measures that are in Addendum VI or to submit
13 conservation equivalency measures for
14 Atlantic States Marine Fishery's approval.

15 Anybody that's interested in seeing
16 the full Addendum VI can see that at the
17 website.

18 And just briefly, conservation
19 equivalency is an option that states have in
20 certain plans where, if the default measures,
21 which are a single set of measures, are not
22 possible for the state, the state can submit
23 other options that they develop that give the
24 same result as the default measures. In this



1 case they have to reduce removals by 18
2 percent.

3 And conservation equivalency
4 measures in this case in the addendum were
5 also given the option of reducing removals by
6 the commercial recreational sectors by
7 requiring the sector to either take the same
8 reduction or a proportional reduction based
9 upon that sector's total removals.

10 On a coast-wide basis, the
11 commercial sector is responsible for
12 10 percent of striped bass removals while the
13 recreational sector is responsible for
14 90 percent.

15 The term removal, you will notice
16 is being used in this plan, and that's what
17 we are being held to rather than harvest,
18 because almost 50 percent of the estimated
19 mortality from the recreational sector
20 results from catch and release mortality.

21 So out of that 90 percent of
22 removals that are attributable to the
23 recreational sector, almost 50 percent of
24 that is catch and release mortality.



1 Delaware submitted two conservation
2 equivalency measures. Both were approved by
3 the Atlantic Striped Bass Management board at
4 the February meeting of the Atlantic States
5 Marine Fisheries Commission.

6 These measures were developed by
7 Fish and Wildlife in November of 2019. So,
8 just to keep the timeline straight, we have
9 already had the measures. They were
10 submitted, but we could not implement them
11 because they had not been approved by the
12 Atlantic States Marine Fisheries Commission,
13 although we were fairly confident they would
14 be.

15 The first option, the first
16 measure, rather, reduces removals
17 proportionately by sector and results in a
18 1.8 percent reduction to the removals of the
19 commercial sector and a 20.4 percent
20 reduction to the recreational sector.

21 The second measure we submitted for
22 approval reduces removals by 18 percent by
23 sector.

24 The two measures labeled options



1 one and two in the proposed regulation,
2 differing commercial quota and recreational
3 slot size.

4 Given an extremely limited time to
5 get a regulation in place for the 2020
6 striped bass fishing season, Delaware
7 implemented Option 1 by Secretary's Emergency
8 Order on February 15, 2020.

9 And Option 1, as I said, these
10 options had been developed in November. As
11 alluded to earlier, this was the option that
12 was recommended that DNREC implement by the
13 Advisory Council on Tidal Finfisheries at
14 their November meeting.

15 And just to be clear, both options
16 are under consideration for this proposed
17 regulation right now.

18 And the options to play them out
19 here, in the highlights you can see on top is
20 Option 1, below Option 2. The differences
21 are highlighted.

22 On the recreational side, the slot
23 for Option 2 has three additional inches, so
24 it's 28 to less than 38 inches, while Option



1 1 is 28 plus to 35 inches.

2 On the commercial side, the
3 commercial quota in total is 142,474 pounds
4 under option one and 118,969 pounds under
5 Option 2.

6 And so that is the regulation
7 change in a nutshell.

8 And, with that, I will bring us
9 back to a comment screen and turn it back
10 over to Theresa.

11 MS. NEWMAN: Thank you. Does that
12 complete your presentation?

13 MR. CLARK: Yes, it does.

14 MS. NEWMAN: Okay. Great. So I
15 have the Department exhibits that you earlier
16 mentioned, Exhibits Number 1 through 13, and
17 I hereby do mark those Exhibits 1 through 13
18 as the Department Exhibits 1 through 13.

19 Is there anything further you would
20 like to add, Mr. Clark?

21 MR. CLARK: No. I just would
22 stress that people that do want to comment on
23 this hearing to not just say they prefer
24 Option 1 or prefer Option 2 but to give us a



1 full reason as to why they are supporting
2 that option. That would be very helpful in
3 the final decision.

4 MS. NEWMAN: Okay. Great. Thank
5 you. This will now conclude the hearing. I
6 want to thank everyone who has attended.

7 Again, the record will remain open
8 through July 10, 2020 to receive comment.

9 We have the information on the page
10 right now, the web page -- or sorry -- the
11 presentation. There is a few different ways
12 that you can submit the comments. Please
13 take note of that.

14 And, again, thank you, everyone.
15 This hearing is now adjourned at 6:18 p.m.

16 (Adjourned at 6:18 p.m.)
17
18
19
20
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22
23
24



CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 2nd day of July 2020.



Lorena J. Hartnett
Registered Professional Reporter



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